

# **SENATE, No. 528**

## **STATE OF NEW JERSEY**

### **218th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**Co-Sponsored by:**

**Senators Pennacchio, Doherty, Cardinale, A.R.Bucco, Corrado and T.Kean**

**SYNOPSIS**

“New Jersey Jobs Protection Act;” requires verification of employment.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 1/16/2019)**

1 AN ACT concerning the employment of unauthorized aliens,  
2 designated as the “New Jersey Jobs Protection Act” and  
3 supplementing Title 34 of the Revised Statutes.  
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*  
7

8 1. This act shall be known and may be cited as the “New Jersey  
9 Jobs Protection Act.”  
10

11 2. The Legislature finds and declares that:

12 a. The State of New Jersey’s economy is currently in recession,  
13 resulting in a large number of lost jobs and lost job opportunities  
14 for State residents;

15 b. The current loss of jobs and job opportunities in New Jersey  
16 is part of a larger trend of private sector job loss in the State in  
17 recent years;

18 c. The loss of jobs and job opportunities has resulted in an ever  
19 increasing number of unemployment benefit claims being filed by  
20 New Jersey residents;

21 d. The ever increasing number of individuals collecting  
22 unemployment compensation benefits is rapidly depleting the  
23 State’s unemployment compensation fund;

24 e. The State’s unemployment compensation fund is funded  
25 through a tax on employers and employees of the State and if the  
26 reserve of the fund falls below a certain level, it triggers a tax  
27 increase to New Jersey businesses, which are already under  
28 considerable financial pressure;

29 f. The State has a fiscal and moral responsibility to implement  
30 public policies that foster economic growth and full employment for  
31 all legal residents of the State;

32 g. In November, 2008, an estimated 275,100 persons were  
33 unemployed in New Jersey;

34 h. In 2007, an estimated 470,000 citizens of foreign nations  
35 were living in New Jersey in violation of federal immigration laws;  
36 these individuals are known as unauthorized aliens;

37 i. Many of these unauthorized aliens are being employed by  
38 unscrupulous New Jersey employers and therefore denying jobs to  
39 legal State residents;

40 j. Many of these unauthorized aliens are paid substandard  
41 wages and are purposely misclassified to avoid paying State taxes  
42 and contributing to State benefit programs, such as unemployment  
43 compensation;

44 k. Such illegal and unfair competition results in: fewer  
45 employment opportunities for legal residents; a reduction in State  
46 tax revenues; a continued decline of the State’s unemployment  
47 insurance fund; a decrease in wages for legal residents; an unfair  
48 economic advantage to those employers who do not pay their fair

1 share of State tax obligations; a negative effect on the State's  
2 economy; significant uncompensated costs to local governments  
3 and taxpayers; additional unauthorized aliens entering or remaining  
4 in New Jersey illegally; and, an erosion of public respect for the  
5 rule of law in New Jersey and the United States;

6 1. The public interest requires that the State of New Jersey hold  
7 such unscrupulous employers accountable for their illegal actions,  
8 enforce applicable State laws, and impose appropriate penalties to  
9 deter such conduct in the future;

10 m. Employers in New Jersey can now verify that the individuals  
11 they employ are eligible for lawful employment in this State  
12 through the federal E-verify program;

13 n. The State must take action to protect law abiding employers  
14 and employees and ensure that employers who continue to violate  
15 the laws of this State are dealt a progressive series of monetary  
16 penalties that will discourage any future violations.

17  
18 3. As used in this act:

19 "Employee" means an individual who is employed by an  
20 employer.

21 "Employer" means an individual or entity that transacts business  
22 in this State that employs one or more individuals who perform  
23 employment services in this State. "Employer" includes the State,  
24 any political subdivision of this State and self-employed persons.

25 "E-verify" means the basic employment verification program as  
26 jointly administered by the United States Department of Homeland  
27 Security and the Social Security Administration or its successor  
28 program.

29 "Intentionally" means, with respect to a result or to conduct  
30 described in this act, that a person's objective is to cause that result  
31 or to engage in that conduct.

32 "Knowingly employ an unauthorized alien" means those actions  
33 described in 8 U.S.C. s.1324a. This term shall be interpreted  
34 consistently with 8 U.S.C. s.1324a and any applicable federal rules  
35 and regulations.

36 "Unauthorized alien" means an alien who does not have the legal  
37 right or authorization under federal law to work in the United States  
38 as described in 8 U.S.C. s.1324a(h)(3).

39  
40 4. a. An employer shall not intentionally employ an  
41 unauthorized alien or knowingly employ an unauthorized alien.

42 b. On receipt of a complaint that an employer allegedly  
43 intentionally employs an unauthorized alien or knowingly employs  
44 an unauthorized alien, the Attorney General or county prosecutor  
45 shall investigate whether the employer has violated subsection a. of  
46 this section. When investigating a complaint, the Attorney General  
47 or county prosecutor shall verify the work authorization of the  
48 alleged unauthorized alien with the federal government pursuant to

1 8U.S.C. s.1373(c). A state, county or local official shall not attempt  
2 to independently make a final determination as to whether an alien  
3 is authorized to work in the United States. An alien's immigration  
4 status or work authorization status shall be verified with the federal  
5 government pursuant to 8 U.S.C. s.1373(c).

6 c. If, after an investigation, the Attorney General or county  
7 prosecutor determines that the complaint is not frivolous:

8 (1) The Attorney General or county prosecutor shall notify the  
9 United States Immigration and Customs Enforcement of the  
10 unauthorized alien.

11 (2) The Attorney General or county prosecutor shall notify the  
12 local law enforcement agency of the unauthorized alien.

13 (3) The Attorney General shall notify the appropriate county  
14 prosecutor to bring an action pursuant to section 5 of this act if the  
15 complaint was originally filed with the Attorney General.

16

17 5. a. An action for a violation of section 4 of this act shall be  
18 brought against the employer by the county prosecutor in the county  
19 where the unauthorized alien employee is employed. The county  
20 prosecutor shall not bring an action against any employer for any  
21 violation of subsection a. of this section that occurs before July 1,  
22 2011.

23 b. For any action in Superior Court under this act, the court  
24 shall expedite the action, including assigning the hearing at the  
25 earliest practicable date.

26

27 6. On a finding of a violation of section 4 of this act:

28 a. For a first violation during a three year period that is a  
29 knowing violation the court:

30 (1) Shall order the employer to terminate the employment of all  
31 unauthorized aliens.

32 (2) Shall order the employer to be subject to a three year  
33 probationary period. During the probationary period the employer  
34 shall file quarterly reports with the county prosecutor. The reports  
35 shall include, but not be limited to, documentation of the E-verify  
36 confirmation of each new employee who is hired by the employer at  
37 the specific location where the unauthorized alien performed work.

38 (3) Shall order the employer to pay a penalty of \$10,000 for  
39 each unauthorized alien employed by the employer at the time the  
40 action against the employer is filed with the county prosecutor or  
41 the Attorney General. All moneys recovered from a penalty  
42 imposed pursuant to this section shall be paid into the State  
43 Treasury to the credit of the General Fund.

44 b. For a second violation of section 4 of this act during the  
45 period of probation, the court:

46 (1) Shall order the employer to terminate the employment of all  
47 unauthorized aliens.

1 (2) Shall order the employer to be subject to an additional five  
2 year probationary period. During the probationary period the  
3 employer shall file quarterly reports with the county prosecutor.  
4 The reports shall include, but not be limited to, documentation of  
5 the E-verify confirmation of each new employee who is hired by the  
6 employer at the specific location where the unauthorized alien  
7 performed work.

8 (3) Shall order the employer to pay a penalty of \$20,000 for  
9 each unauthorized alien employed by the employer at the time of  
10 the action against the employer being filed with the county  
11 prosecutor or the Attorney General. All moneys recovered from a  
12 penalty imposed pursuant to this section shall be paid into the State  
13 Treasury to the credit of the General Fund.

14 c. For a third violation of section 4 of this act during the period  
15 of probation, the court:

16 (1) Shall order the employer to terminate the employment of all  
17 unauthorized aliens.

18 (2) Shall order the employer to pay a penalty of \$30,000 for  
19 each unauthorized alien employed by the employer at the time of  
20 the action against the employer being filed with the county  
21 prosecutor or the Attorney General. All moneys recovered from a  
22 penalty imposed pursuant to this section shall be paid into the State  
23 Treasury to the credit of the General Fund.

24  
25 7. The Attorney General shall maintain copies of court orders  
26 that are received pursuant to section 6 of this act and shall maintain  
27 a database of the employers who have been found to have  
28 committed a first violation of subsection a. of section 4 of this act  
29 and make the court orders available on the Attorney General's  
30 website.

31  
32 8. a. In determining whether an employee is an unauthorized  
33 alien, the court shall consider only the federal government's  
34 determination pursuant to 8 U.S.C. s.1373(c). The federal  
35 government's determination creates a rebuttable presumption of the  
36 employee's lawful status. The court may take judicial notice of the  
37 federal government's determination and may request the federal  
38 government to provide automated or testimonial verification  
39 pursuant to 8 U.S.C. s.1373(c).

40 b. For the purposes of this section, proof of verifying the  
41 employment authorization of an employee through the E-verify  
42 program creates a rebuttable presumption that an employer did not  
43 intentionally employ an unauthorized alien or knowingly employ an  
44 unauthorized alien.

45 c. For the purposes of this section, an employer who  
46 establishes that it has complied in good faith with the requirements  
47 of 8 U.S.C.s.1324b establishes an affirmative defense that the

1 employer did not intentionally or knowingly employ an  
2 unauthorized alien.

3

4 9. This act shall not be construed to require an employer to take  
5 any action that the employer believes in good faith would violate  
6 federal or State law.

7

8 10. After December 31, 2011, every employer, after hiring an  
9 employee, shall verify the employment eligibility of the employee  
10 through the E-verify program, within ninety days of date of hire.

11

12 11. The Attorney General, pursuant to the “Administrative  
13 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt  
14 rules and regulations necessary to effectuate the purposes of this  
15 act.

16

17 12. This act shall take effect immediately.

18

19

## 20 STATEMENT

21

22 This bill, the “New Jersey Jobs Protection Act,” requires that all  
23 employers use the federal “E-verify” system to check the  
24 employment eligibility of each new hire, within ninety days of the  
25 date of hire.

26 The bill establishes a graduated penalty system against any  
27 employer who knowingly employs unauthorized aliens. The penalty  
28 for the first offense will be a \$10,000 fine for each unauthorized  
29 alien and three years of monitored probation. During the  
30 probationary period the employer is required to file quarterly  
31 reports with the county prosecutor. The reports must include, but  
32 shall not be limited to, documentation of the E-verify confirmation  
33 of each new employee who is hired by the employer at the location  
34 where the unauthorized alien performed work.

35 The penalty for a second offense will be a \$20,000 fine for each  
36 unauthorized alien and an additional five years of monitored  
37 probation. The penalty for a third offense will be a \$30,000 fine for  
38 each unauthorized alien.

39 Under the bill, proof that the employee’s eligibility to work was  
40 confirmed through the E-verify program creates a rebuttable  
41 presumption that the employer did not intentionally or knowingly  
42 employ an unauthorized alien.

43 E-verify is an Internet-based system operated jointly by the  
44 Department of Homeland Security and the Social Security  
45 Administration. It provides an automated link to federal databases  
46 to help employers determine employment eligibility of new hires  
47 and the validity of their Social Security numbers. It is currently  
48 available to employers without charge.